

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)	
)	WT Docket No. 00-130
TeleCorp PCS, Inc., Tritel, Inc. and)	DA 00-1589
Indus, Inc. Seek FCC Consent to)	
Transfer Control of, or Assign,)	
Broadband PCS and LMDS Licenses)		

**OPPOSITION OF TRITEL COMMUNICATIONS, INC.
 TO THE COMMENTS ON OR, IN THE ALTERNATIVE, PETITION TO DENY OF
 NEXTEL COMMUNICATIONS, INC.**

Tritel Communications, Inc. ("Tritel"), by its attorney, hereby submits its opposition to the captioned pleading (the "Nextel Comments") submitted by Nextel Communications, Inc. ("Nextel"). There is no need for the Commission to devote serious consideration to the Nextel submission, and Tritel urges the Commission to dismiss it promptly.

Nextel is not a party in interest in this proceeding. Thus, while Nextel may file informal comments in this proceeding, it cannot, pursuant to 47 U.S.C. §309, file a petition to deny. Accordingly, there is no need for the Commission to take the time to draft an elaborate response to the Nextel comments (as it would have been mandated to do were Nextel authorized to file a petition to deny).

The gravamen of the Nextel submission, i.e., that TeleCorp is somehow too big to be an Entrepreneur, is neither new nor convincing. As Nextel itself admits, Nextel has merely repackaged here arguments that it has made in a generic rulemaking proceeding (WT Docket No. 97-82) and in two applications for consent to assignment of licenses involving Leap Wireless International, Inc.

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See footnote 2 to the Nextel Comments. The fact that Nextel has already raised these arguments in a generic rulemaking proceeding is significant for several reasons. First, the Commission has already announced rules to address Entrepreneur eligibility in that proceeding.¹ Thus, it need not establish here any new law or policy. Second, whereas Nextel has no apparent interest in any of the markets here at issue, it has been active in the rulemaking proceeding. In fact, it has been sufficiently active to raise the specter that its submission in this proceeding may have been designed more to impact on the rulemaking proceeding decision than on one involving the licenses here at issue. Lastly, it evidences that the argument raised by Nextel is better presented in the context of a rulemaking proceeding looking towards modification of rules having future applicability rather than compliance with currently applicable rules.

What Nextel had no need to mention in the rulemaking proceeding, and either overlooked or chose to omit in the instant proceeding, is that Section 24.839(a)(2) of the Commission's rules is the provision most on point with respect to eligibility of an existing Entrepreneur licensee to obtain licenses through the after market. Specifically, that section provides that an assignee need not demonstrate its current compliance with the entrepreneurial and small business thresholds set forth in the Commission's rules if it already holds entrepreneur licenses and obtains them validly by virtue of meeting all applicable criteria at the time those licenses were acquired. *See* 47 C.F.R. §24.839(a)(2).

As Tritel understands the core Nextel argument, Nextel's position is that because there is a considerable discrepancy between the company assets as reported to the Securities and Exchange

¹ *See* News Release, DA- _____, released August 25, 2000.

Commission (the “SEC”) and the assets as reported in the FCC application, there must be some rule violation. Although comparison of submissions made to different regulatory agencies can often prove insightful,² it is imperative that any comparison be of “apples to apples”. Here, no such comparison is present. In devising rules to assure that small businesses have a genuine opportunity to participate in the auction process, the Commission limited considerably the assets and revenues that are attributable in calculating compliance with its rules. *See generally* 47 CFR §24.709 and 24.720. Those rules are not equally applicable to filings before the SEC and there thus should be no wonder that the numbers submitted to different federal agencies, for different regulatory purposes, and in compliance with different regulatory rules and definitions would be different.

Nextel fares no better in its “analysis” of compliance with the minimum equity requirements for “qualifying investors”. *See* Nextel Comments, 3-5. There, Nextel seeks to apply the general fifteen percent (15%) minimum without appreciating the tracking stock concept that constitutes a vital component of the TeleCorp and Tritel licenses at issue. Once the tracking stock is properly considered, the qualified investors issue that Nextel sought to raise evaporates. This is in addition to the fact that the Commission has recently determined to remove any minimum equity for controlling parties. Accordingly, the Nextel argument fails both under the facts here at issue and under the Commission’s rules as recently promulgated.

² *See e.g.*, the artfully prepared comparisons presented in the pleadings submitted in the Baker Creek Communications, L.P. proceeding, where such comparisons demonstrated certain failings on the part of the applicant. In re applications of Baker Creek Communications, L.P., 13 FCC Rcd 18709, *Memorandum Opinion and Order* (1998).

The Nextel Comments provide no basis for postponing action on the captioned applications.

Accordingly, Tritel urges the Commission to grant them post haste.

Respectfully submitted,

TRITEL COMMUNICATIONS, INC.



Thomas Gutierrez

Its Attorney

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, NW
Suite 1200
Washington, DC 20036
(202) 857-3500

August 28, 2000

CERTIFICATE OF SERVICE

I, Jennifer McCord, a Secretary in the firm of Lukas, Nace, Gutierrez & Sachs, Chartered, hereby certify that a copy of the foregoing "OPPOSITION OF TRITEL COMMUNICATIONS, INC. TO THE COMMENTS ON OR, IN THE ALTERNATIVE, PETITION TO DENY OF NEXTEL COMMUNICATIONS, INC." was sent by hand delivery this 28th day of August, 2000 to the following:

International Transcription Services, Inc.
445 12th Street, SW, Room CY-B402
Washington, DC 20554

Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C252
Washington, DC 20554

Kathleen O'Brien Ham
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C255
Washington, DC 20554

Clint Odom
Legal Advisor to Chairman Kennard
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Peter Tenhula
Senior Legal Advisor
to Commissioner Powell
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

Christopher Wright
Office of General Counsel
Federal Communications Commission
445 12th Street, SW, Room 3-C252
Washington, DC 20554

Bryan Tramont
Legal Advisor to Commissioner
Furchtgott-Roth
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Adam Krinsky
Legal Advisor to
Commissioner Tristani
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Lauren Kravetz
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-A163
Washington, DC 20554

Mark Schneider
Senior Legal Advisor to
Commissioner Ness
Federal Communications Commission
445 12th Street, SW, Room 8-8-B115
Washington, DC 20554

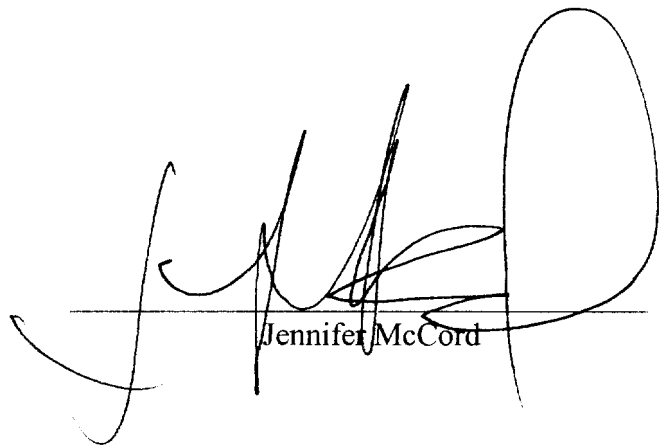
John Branscome
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-A234
Washington, DC 20554

Eric W. DeSilva*
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Douglas I. Brandon*
AT&T Wireless PCS, LLC
1150 Connecticut Avenue, NW, 4th Floor
Washington, DC 20036

Robert S. Foosaner*
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

Leonard J. Kennedy*
John S. Hogan
Christina H. Burrow
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036-6802



Jennifer McCord

* Via U.S. Mail